IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 15883 of 2005(N)

AGAINST THE ORDER DATED IN EP.344/2004 IN OS.643/2000 of MUNSIFF COURT, CHITTUR

.....

PETITIONER:

THANKAVELU, AGED 51 YEARS,
S/O.RAMASWAMY THEVAR,
VELANTHAVALAM, THENAMPATHY VILLAGE,
CHITTUR, PALAKKAD.

BY ADV. SRI.U.MUHAMMED MUSTHAFA
SRI.K.ABDUL JAWAD

RESPONDENT:

RAMESH BABU, AGED 36 YEARS,
S/O.KRISHNAMOORTHY,
DOOR NO.7, VELLAYAMMAL LAY OUT,
OOTHUKKADU ROAD, KASABA POLLACHI,
POLLACHI TALUK.

BY ADV. SRI.P.R.VENKETESH
SRI.P.R.RAJA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 15883/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF E.P. DATED 5.9.2004 IN E.P.344/04 IN O.S.643/2000 FILED BY THE RESPONDENT.

EXT.P2: TRUE COPY OF OBJECTION DATED 2.2.05 IN E.P.344/04 IN O.S.643/00 FILED BY THE PETITIONER.

EXT.P3: TRUE COPY OF ORDER DATED 8.4.2005 IN E.P.344/04 IN O.S.643/2000 PASSED BY THE HON'BLE MUNSIFF OF CHITTUR.

PIUS C. KURIAKOSE,J.

- -

W.P.(C) No.15883 of 2005

- -

Dated: 14th August, 2007

JUDGMENT

Whether the petitioner who makes bread and other bakery products, all by himself, for distribution/sale will qualify as a labourer for the purposes of Section 60(1)(c) of the Code of Civil Procedure is the question which arises for consideration in this Writ Petition under Article 227 of the Constitution.

2. The learned Munsiff under Ext.P3 order repelled the claim of the petitioner that he is a labourer and therefore his immovable property under personal occupation is exempt from attachment and sale. In his evidence as PW.1, the petitioner-Sri.Thankavelu conceded that he owns a bakery by name 'Thankavelu Bakery' at Velanthavalam and distributes the products, bread and biscuits, to other bakeries and shops in the locality. It became evident in the case that manual labour is put in by the petitioner in his bakery and that he does not have anybody else to assist him in his work. The learned Munsiff obviously thought that the property of a person who makes bakery items in a fairly large scale and supplies his products to other bakeries cannot be given immunity from attachment and sale which is intended by the Legislature to be given only for labourers

who labour for wages.

3. I do not find any infirmity in the view taken by the learned Munsiff. The petitioner may be putting in manual labour. But he labours for profit and not for wages or remuneration. In order that a person shall qualify as a labourer for the purposes of Section 60(1)(c) of the Code, he has to work for wages or remuneration and not for profit. There is sufficient support in Section 60 itself for the view that labourers and domestic servants who are bracketed along with agriculturists in that Section should be persons drawing wages, whether it be in money or in kind [See Section 60(1)(h) and also Explanations IV and VI to the proviso to Section 60(1)]. A baker who makes bread and biscuits for being supplied to other bakeries and shops, works for profit. A self-employed labourer, however hard he labours, will not qualify as labourer for the purposes of Section 60 of the Code of Civil Procedure.

4. The challenge against Ext.P3 therefore fails. At the same time I notice that the petitioner is not in very affluent circumstances. Accordingly, I am of the view that he should be granted the facility of discharging the balance decree-debt in instalments. In fact, this court

while extending the stay imposed a condition that the petitioner shall pay Rs.5,000/- on or before 11.2.2006. Counsel for the decree-holder submits that the above condition has not been complied with. Nevertheless, even as I dismiss the Writ Petition, I direct the learned Munsiff to keep Ext.P3 in abeyance on condition that the petitioner pays every month commencing from 15.9.2007 at the rate of Rs.5000/- till such time as the entire decree debt is wiped off. In the event of any single default in the matter of payment of instalments, the petitioner will forfeit the above benefit in which case the impugned order will become operative.

The Writ Petition is dismissed subject to the above directions.

tgl/srd **PIUS C.KURIAKOSE, JUDGE**